Supreme Court, U. S.
FILED
JUL 29 1974
MICHAEL RODAK, JR., CLERK

APPENDIX NO. 1

Supreme Court of the United States

OCTOBER TERM

No. 73-1500

DON R. ERICKSON, Warden
South Dakota State Penitentiary, Petitioner,

v.

United States of America ex rel.
JOHN LEE FEATHER, Respondent,
United States of America ex rel.
LAVERNE BLACK THUNDER, Respondent,
United States of America ex rel.
AMBROSE ST. JOHN, Respondent,
United States of America ex rel.
JAMES R. KEEBLE, Respondent,
United States of America ex rel.
CURTIS SMALL, Respondent,
United States of America ex rel.
ROMAN V. DERBY, Respondent,
United States of America ex rel.
JOSEPH DAY, Respondent,
United States of America ex rel.
ARNOLD LAFROMBOISE, Respondent,
United States of America ex rel.
CLARENCE WALKER, Respondent,
United States of America ex rel.
THEODORE DUANE WYNDE, Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1974
CERTIORARI GRANTED JUNE 3, 1974

INDEX

	Page
Letter from E. F. Best, Assistant Commissioner of the General Land Office to Commissioner of Indian Affairs, Aug. 5, 1897	1
Affidavit of David Johnson and William Wakana, Members of the Sisseton-Wahpeton Bands of Sioux Indians to Commissioner of Indian Affairs, Oct. 4, 1901	2
Affidavit of Henry S. Morris, United States Special Agent to Commissioner of Indian Affairs, Sept. 30, 1902	3
Letter from W. A. Jones, Commissioner of Indian Affairs to Sen. A. B. Kittridge, Nov. 18, 1902.	6
Letter from Charles Burke, Chairman of the House Committee on Indian Affairs to Commissioner of Indian Affairs, Feb. 10, 1906	9
Letter F. H. Abbott, Commissioner of Indian Affairs to Sanford E. Allen, Superintendent of Sisseton School, Nov. 13, 1912	10
Letter from William R. Layne, Acting Chief of Land Division to Sanford E. Allen, Superintendent of Sisseton School, April 3, 1913	11
Letter from E. B. Meritt, Assistant Commissioner of Indian Affairs to Re. Royal C. Johnson, Nov. 13, 1918	12
Letter from Charles Burke, Commissioner of Indian Affairs to Rep. Royal C. Johnson, Aug. 24, 1918.	13
Letter from D. W. Diggs to John W. Noble, Secretary of Interior, April 22, 1889.	15
Resolutions of the Convention of Eight Counties, to "take Action Relative to the Opening of the Sisseton Indian Reservation," May 1, 1889.....	16
The Minneapolis Tribune, May 22, 1889.	
Letter from D. W. Diggs to John W. Noble, Secretary of Interior, May 13, 1889.	18
Letter from Commissioner of Indian Affairs to Secretary of Interior, June 21, 1889	22
Letter from T. J. Morgan, Commissioner of Indian Affairs to Secretary of Interior, Aug. 13, 1889.	25
Letter from T. J. Morgan, Commissioner of Indian Affairs to Secretary of Interior, Aug. 13, 1889.	26
Letter from T. J. Morgan, Commissioner of Indian Affairs to Secretary of Interior, Nov. 12, 1889	29
Letter from Department of English, University of South Dakota to Walter W. Andre, Assistant Attorney General of South Dakota, July [illegible], 1974	31

71125--1897.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., Aug. 5, 1897.

The Commissioner
of Indian Affairs,

Sir:

Referring to your letter of July 27, 1897, Land - 29166-1897, inquiring as to the status of lots 1 and 2 Sec. 3 T. 124 N. R. 51 W., former Sisseton and Wahpeton Reservation, South Dakota, I have to state that the records of this office show that lot 1 was patented to Christina Belle Bailey, and lot 2 to Millie M. Bailey, July 22, 1889 - Recorded in Vol. 3 pp. 344 and 357.

These patents were sent to your office July 25, 1889.

Very respectfully,

Assistant Commissioner.

State of South Dakota)
(ss.
County of Roberts)

Henry S. Morris, being duly sworn, doth depose and say that he is a resident of the City of Sisseton, County of Roberts in the State of South Dakota and has been for the past six years. That in the year 1870, as a child he moved with his parents to the Goodwill Mission which is located near the Sisseton Agency within the former Lake Traverse Indian reservation in South Dakota. That during all of the years interveneing from 1870 to 1891, this affiant continued to live at the said Goodwill Mission with the exception of such time or times as he was away attending school or college. That since the year 1891 and up to the present time, he has been located, first at Brownsvalley, Minnesota, for a few months, then at Wilmot, South Dakota as clerk of the Circuit Court for the period of four years and since that at Sisseton, South Dakota. That the first named place to wit: Brownsvalley Minnesota, is located on the west line of the state of Minnesota and within a mile of the boundry line of the said Lake Traverse Indian Reservation. That the said town of Wilmot was the former County seat of Roberts County, South Dakota, in which the larger part of the former Lake Traverse Indian reservation is located. That the said town of Sisseton is situated within the former Lake Traverse Indian reservation and about eight miles distant from the Sisseton Agency. That by reason of these facts, the said affiant during all of these years been intimately acquainted with the Indians residing upon the said Lake Traverse Indian Reservation. That the said affiant speaks the Indian language as fluently as he speaks the English.

Affiant further deposes and says, that during the year 1891, as a United States special agent, he was engaged in the allotment of lands to the said Indians residing at the said Sisseton Agency and within the former Lake Traverse Indian reservation. That as such United States special agent, this affiant made allotment in the said year among others to one Ko zi pe and his family as more fully appears upon the allotment sheet number 73 of the allotment roll which was returned by this affiant to the honorable commissioner of the Indian affairs. That the number of the said

Ko zi pe on the said allotment roll I3I2 and that the names of the family of the said Ko zi pe and the descriptions of the lands allotted to him and to his family are asffollows : to Ko zi pe allotment # I3I2 the NE¼ of Sec. 3, Twp. I25, R. 5I. To Ocan ku to pa na allotment # I3I3, a son of the siad Ko zi pe but irroneously marked daughter upon the said allotment roll the N ½ of the NE ¼ and the E ½ of the NW ¼ Sec. 4, Twp. I25, R. 5I. To Wi ya wa xte win # I3I4 on the allotment roll wife of said Ko zi pe the SE ¼ Sec. 34, Twp. I26, R. 5I. To A ki ta pe win # I3I5, a daughter of said Ko zi pe the SE ¼ Sec. 33 Twp. I26, R. 5I and to Ma ko ce yu he na # I3I6 on said allotment roll a son of said Ko zi pe, the W ½ of the NE ¼ and the W ½ SE ¼ Sec. 3, Twp. I25, R. 5I, all of which will more fully appear, reference being had to the allotment rolls on file in the office of the honorable commissioner of Indian affairs. That the said Ko zi pe was placed upon the said roll and given the said allotment of lands by reason of the fact that an investigation made by this affiant as United States special agent, showed him to be a member of the Sisseton band of Sioux Indians. That he had no other allotments at any other Indian agency and was entitled to enrollment at the Sisseton Indian Agency and also by reason of the petition signed by Adam Littlethunder and other Indians members of the Sisseton and Wahpeton Band of Indians and located at the Sisseton Agency, which said petition was filed with the said allotment roll as appendix # 2. That when the investigation referred to herein was completed, and the said Ko zi pe appeared before this affiant for the purpose of selecting his lands for allotment, he appeared with one Adam Littlethunder already herein referred to, and in reply to the question of this affiant stated that his name was Ko zi pe or Ma ke wa xte xte or Ma to hna xkin yan and that the said Indian was accordingly enrolled under the name of Ko zi pe, that the Indian name Ma to hna xkin yan being interpreted means Crazy Bear and that the name as first given herein to Ko zi pe

was given by the said Indians as an attempted pronounciation of the words Crazy Bear, but was not at that time so understood by this affiant. Affiant further deposes and says that the Indian and his family to whom the above described allotments were made and who was enrolled in the said allotment roll as Ko zi pe # I3I2, and the Indian now residing near Sisseton upon the siad and above described lands and known as Crazy Bear or Ma to hna xkin yan is the same and identical person. Affiant further deposes and says that to the best of his knowledge and recollection no other Indian or Indians ever selected the above described lands or asked for the said lands to be allotted to them. Affiant furtner deposes and says that the investigation above referred to was made because of the fact that the said Ko zi pe or Crazy Bear had some time prior to I89I been residing at other Agencies in North Dakota and had not immediately prior to I89I been a resident at the Sisseton Indian Agency, and as this affiant now remembers was not enrolled upon the payment roll as prepared by the Indian agent Wm McKusick and special agent S. H. Elrod. Affiant further deposes and says that the matters sworn to herein are all matters of his own personal knowledge and recollection and are not matters (except as otherwise stated) which are based on information and belief.

Henry Sellows

Subscribed and sworn to before me this 30 day of September, 1902.

Notary Public

Washington, November 18, 1902.

Hon. A.B. Kittridge,

United States Senate,

Washington, D.C.

Sir:

Referring to your communication, dated August 22, 1902, in which you stated that the claim was made that certain described lands in the former Sisseton reservation should be relaived from Indians allotment on the ground that the allottee had another tract of land, and to office letter of September 18, 1902, in reply thereto, you are advised that this office is now in receipt of a communication from Agent C.H. Jackson of the Sisseton Agency, dated November 8, 1902, in which he transmits the evidence taken by him covering the following allotments, No. 1312, Kosipi, the N.W. /4 of Sec. 3, T. 125, R. 51; No. 1313, O-can-ku-to-pa-win, the W/2 of the NW/4 and the W/2 of the NW/4 of Sec 4, T. 125, R.51 W; No. 1314. Mi-ya-wa-ste-win, the SW/4 of Sec. 34, T. 126, N. of R. 51 W.; No. 1315. A-ki-ta-pi-win, the SW/4 of Sec. 33, T. 126, N. of R. 52, W.; No. 1316, Ma-ko-ce-yu-he-na, the W/2 of the N.W./4 and the W/2 of the SW/4, Sec. 3, T.125, N. of R. 50 W.

According to the schedule on file in this office allottee, No. 1314 is the wife of No. 1312, Nos. 1313 and 1315 are the daughters and No. 1316 is the son of No. 1312.

At the hearing before the Agent it was contended by the parties attacking the allotments that ~~these~~ these allotments were selected by and for Hin-han-ko-yag-mani, or Walks with Owl, a Crow Creek Indian, who, with six children, was allotted on the Crow Creek reservation.

It is contended by the allottee, and supported by the evidence among other witnesses, of Special Allotting Agent, H.H. Morris, who made the allotments, that Ko-zi-pi is an Indian, named in English, Crazy Bear, or in Indian, Ma-to-hna-skin-yan.

There appears to be no reasonable doubt that Crazy Bear was the Indian intended to be allotted.

It is further maintained by those attacking the allotments, that Crazy Bear was not entitled to allotment, as he belonged to the hostiles, who were assigned to the Devil's Lake reservation, in North Dakota.

Regarding this contention, Special Alloting Agent Morris, swears that in 1891 he made allotments to the Sisseton Indians, and among others, to Ko-zi-pi and his family, as more fully appears on allotment sheet No.75, He describes the allotments and states that No. 1313 was made to O-can-ku-to-pa-win, a son of Ko-zi-pi, but erroneously marked " daughter" on said schedule; that said Ko-zi-pi , was placed upon the roll and given allotments by reason of the fact that an investigation was made by him as Special Alloting Agent showed Ko-zi-pi to be a member of the Sisseton and Wahpeton, Band, of Sioux Indians; that he had no other allotments at any other Indian Agency, and was entitled to enrollment at the Sisseton Agency. and also by reason of a petition signed by Adam Little Thunder, which petition was filed with said allotment schedule as an appendix, that when the investigation was completed Ko-zi-pi appeared before the affiant for the purpose of selecting his land, that he appeared with Adam Little Thunder and stated that his name was Ko-zi-pi, or Ka-ke-wa-xte-xte or Ma-to-hna-xkin-yan, and that said Indian was enrolled under the name of Ko-zi-pi. the name of Ma-to-hna-xkin-yan, meaning Crazy Bear, and Ko-zi-pi, being an attempted pronunciation by the Indian of Crazy Bear.

The petition referred to is on file in this office, It is signed by J.R. Brown, and twenty seven other members of the tribe, who state that they know Ko-zi-pi Ka-ke-waste-ste to be a Sisseton and Wahpeton Indian by blood and worthy to receive an allotment on the Lake Traverse Reservation, they therefore petition that allotments be made him and family. To this is added a note " 4 in total) and one born since the above was written".

On this statement, and Special Alloting Agent Morris's report, the allotments of Ko-zi-pi and the four members of his family were approved.

It has always been found impossible to strictly draw the line between the loyal members of the Sisseton and Wahpeton Bands and those who were either hostile or else, through fear or other causes, fled with the hostile at the time of the outbreak. It is well known that some of the Indians upon the Sisseton and Wahpeton reservation, were either actively disloyal

or else accompanied the hostiles. Two reservations were provided for these bands, one at Sisseton and one at Devil's Lake the latter being for the hostile Indians.

Crazy Bear is admitted to be a member of the Sisseton Band and he has not been allotted on the Devil's Lake Reservation. His son has improvements upon h s allotment, and the father and mther live with him. This office sees no good reason for cancelling the allotment made to him eleven years ago, and allowing him to take lands on the Devil's Lake reservation. In the opinion of this office the allotent should stand.

Very Respectfully,

W.A. Jones,

Commissioner.

House of Representatives U.S.
Washington D C

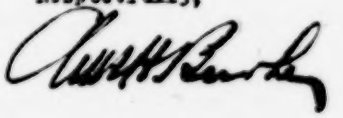
February 10, 1908.

Hon. Commissioner of Indian Affairs,
Washington, D. C.

Sir:

I would respectfully request to be informed as to the present status of a contest, instituted by one Joseph Halbauer, against allotment #410, for the S.W.1/4 N.W.1/4, N.W.1/4 S.W.1/4 13, and S.E.1/4 N.E.1/4 and N.E.1/4 S.E.1/4 14-125-54, in what was formerly the Sisseton Indian Reservation in South Dakota.

Respectfully,



Land-Sales
6451-1912
88028-1912
J F M

Transmits patent in fee.

FOR FILE

NOV 13 1912

Mr. Sanford E. Allen,

Supt. Sisseton School.

Sir:

There is enclosed patent in fee No. 299022 issued to Nick Weis, purchaser of Lots 2, 3 and 4 and the E/2 of the NW/4 of Sec. 24, and Lot 2 of Sec. 13, T. 120 N., R. 53 W. of the 5th P. M. in former Sisseton and Wahpeton Reservation in South Dakota, 166.40 acres of the allotment of Sophia W. Vanderheyden, deceased Sisseton allottee No. 64.

You will deliver the patent to the patentee, taking his receipt therefor in duplicate, the original of which you will transmit to this Office.

Instructions as to the disposition of the proceeds of the sale were given you in Office letter of October 29, 1912 (6451-12).

Respectfully, FILED BY E. S. S.

(Signed) F. H. Abbott

[redacted] Commissioner.

11-PTH-11

J F M

Transmits patent in fee.

APR -3 1913

FOR FILE

Mr. Sanford E. Allen,

Supt. Sisseton School.

Sir:

There is enclosed patent in fee No. 320419, issued to Nils E. Olson, purchaser of the NE/4 of the NW/4, and Lot 1 of Sec. 30, T. 124 N., R. 50 W. of the 5th P.M., in former Sisseton and Wahpeton Reservation, South Dakota, containing 79.56 acres of the allotment of Emma Redearth, noncompetent Sisseton allottee No. 632.

You will please deliver the patent to the purchaser, taking his receipt therefor in duplicate, the original of which you will transmit to this Office. Instructions as to the disposition of the proceeds of the sale were given you in Office letter of March 12, 1913.

Respectfully,

(Signed) John H. Edgerton

4-WJ-2. Acting Chief Land Division.

...3 1918.

Dear Mr. Johnson:

Receipt is acknowledged of your Secretary's letter of October 31, 1918, transmitting certain correspondence relative "Farm homes for returning Soldiers", including copies of two letters from the Board of Trustees of the Town of Auen, South Dakota.

The lands referred to in the correspondence is described as 60,000 acres Government land in Marshall County, South Dakota, and it is suggested by the Commissioner of the General Land Office, in his letter to you of August 24, 1918, that the lands referred to are believed to be in the former Sisseton Indian reservation which were reserved for school, church and agency purposes, and that the area covers only 24,000 acres.

An examination of the records of this Office show that 32840.25 acres comprising sections 16 and 36 within the former Lake Traverse Reservation in South Dakota, were reserved for common school purposes and made subject to the laws of the state wherein located. These lands were granted to the state for school purposes under the provisions of the Act of March 3, 1891 (26 Stat. 1036-1039), and this Department has no jurisdiction over said lands. In addition to the acreage reserved for school purposes 697 acres was reserved for various religious bodies, and 650.01 acres for administrative purposes in connection with the Sisseton Agency. The total acreage included in the several reservations above enumerated amounts to 34187.26 acres, and of this entire amount only 650 acres remains under the jurisdiction of this Department.

It seems from the foregoing that your correspondents have been misinformed both as to the acreage involved and as to its present status. The papers submitted are returned, and there is also enclosed an extra copy of this letter.

Very truly yours,

Hon. Royal C. Johnson,

House of Representatives. Assistant Commissioner.

11 RIO 6

OFFICE OF INDIAN AFFAIRS
RECEIVED
AUG 29 1918
1587

...ust 26, 1918.

Hon. Royal C. Johnson,

House of Representatives.

My dear Mr. Johnson:

I am in receipt of your letter of August 26, 1918, inclosing a communication addressed by the Board of Trustees of the Town of Auen, South Dakota, to Mr. W. L. Martin, Vice President of the "Soo-Line", Minneapolis, Minnesota, also copy of letter addressed by said Board ... U. S. Reclamation Service of this Department.

... attention to certain re... Lands in Marshall County, South Dakota, which ... are to be improved and made available for farm ... for returning soldiers and sailors. They estim... ...ands at $75.00 acre.

... lands referred to are

...ceptable ...

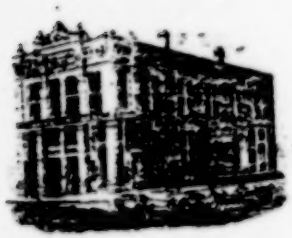
...Register ... 34,000 acres.

... to be taken ...

... for continuing the reservations ... therefore ... relative ... the ... to enable you as ... to ... easily for continuing the reservations.

Very respectfully,

Commissioner.



THE Bank of Milbank

SARGENT & DIGGS, BANKERS.

MILBANK, DAKOTA.

April 22nd '89

Gen'l John W.Noble,
Sec'y Interior .
Washington D.C.

My Dear Sir ;

Will you kindly inform me what is the present status

It lies along the westren line of our county and Roberts north of us , and is a great detriment to our intresets , as it blocks the progress of two or three lines of railroad that we are very anxious to see completed.

We need these roads badly , and the opening of the reservation would give new impetus to immigration which has been attracted by govern - ment lands further west .

Any information that will enable the citizens of this section to render any service that may be needed in hastening the opening will be appreciated .

We also respectfully ask your early attention to the matter if the consummation is left with your department , as I have been informed it is .

If any need should exist for a special agent here , in the opening -, or a commission to be appointed , I trust you will remember

Yours truly.

D.W. Diggs

RESOLUTIONS OF THE CONVENTION

of Eight Counties that Assembled at Watertown, Dakota, May 1st, 1909, to take Action Relative to the Opening of the Sisseton Indian Reservation.

---o-O-o---

"Whereas, The Sisseton Indian Reservation, lying in the midst of a well settled section of country, is a barrier to the completion of railroads in course of construction or progress, and the general welfare of the country, and is not now necessary to the interests of the Indians, they having taken their allotment of land under the Act of Congress, and,

WHEREAS the Indians on this reservation have certain grievances which they urge as a reason for withholding their consent to final action necessary to opening the Reservation to settlement.

RESOLVED: That it is the sense of this convention composed of citizens of all the counties contiguous to the said Reservation that the government of the United States owes a debt of gratitude to all Indians who were loyal and rendered service or befriended the white man in the terrible scenes of the massacre of 1862, and that Chief Gabriel Renville having been conspicuous as a friend of the government and the white man, the government should recognize such loyalty and service in some substantial form.

RESOLVED, That as citizens we will use our influence to secure to Chief Renville and all other Indians who were loyal to the government, who are now members of his band, that justice that has been denied them. Confident that the government will promptly accord to them such compensation as judgment they are under the law entitled, and will see

that the provisions of treaties heretofore made are scrupulously carried out to the end, that any wrong to them resulting from neglect shall be speedily redressed.

RESOLVED, That we recommend to congress, that all men in this band who acted as scouts under Genl. Sibley be suitably rewarded for their loyalty and valuable services.

RESOLVED, that we urge upon the Secretary of the Interior the importance of immediately adjusting all just claims in order that the Sisseton Reservation may be speedily opened

RESOLVED, That it is the sense of the convention that each of the counties of Day, Grant, Roberts, Traverse, Richland, Sargent, Marshall and Codington be requested through their committeemen to contribute the sum of one hundred dollars for the purpose of defraying the expenses of the several committees appointed by this convention:

D. T. DIGGS,
H. E. PEASE,
A. M. KITTON,
E. J. SPEAR,
SHELBY SMITH,
JAMES ROSS,
THOS. C. ROUSE."

I hereby certify the above to be a true copy of the Resolutions passed by the Convention held at Watertown for the purpose of securing the early opening of the Sisseton Indian Reservation

D T Diggs

Milbank S.D. 5/5/09

The Minneapolis Tribune.

NO. 12 WEDNESDAY MORNING, MAY 22 1889

A LARGE POW-WOW.

A Council at Big Brule to Urge the Opening of the Sisseton Reservation.

Chief Gabriel Renville, with His Head Men, and the Rigorous Convention Committee in Attendance.

Indians Complain that Their Services to the White Men in 1862 Entitle Them to Better Treatment.

Appeals for Land for Their Children Specimens of Indian Eloquence—Leader's Sentiment.

HUTCHINSON, S. D., May 21.—[Special.] The committee appointed by the convention at Watertown to go to Washington to urge the completion of the Sisseton treaty by opening the Sisseton reservation, held a council with Chief Gabriel Renville and nine of his head men at the Big Coulee today. After partaking of a bountiful feast which had been prepared by the committee, the party adjourned to a beautiful grove. The Indians seated themselves on the ground in a semi-circle, with the committee occupying chairs. Gen. Pease called on Rev. Chas. H. Crawford, a half brother of the chief, to invoke the dinner blessing, after which the general stated the object of the council to be to ascertain their views in regard to opening the reservation. He introduced [illegible] stenographer to report proceedings, Chief Gabriel Renville was the first to speak, Rev. Mr. Crawford interpreting. The chief said in substance:

I don't feel that I made [illegible] when the white man [illegible]

[illegible] South Dakota we will be one and help each other. We thank you and depend on you to help us.

[illegible] have advanced and shook hands with Gen. Pease and Maj. Diggs, Maj. Hopkins, Edmund Cook spoke, telling them that they must not expect too much. That the great father and the secretary of the interior were just here, and would do all they could for them, but must work in congress didn't favor them with their hearts, and didn't [illegible] they thought, and if they couldn't get all they asked they had better take all they could get. As they sat around on the ground, each one smoked a few whiffs from a stone pipe with a long stem and passed it on to his next neighbor. At the conclusion of each sentence, by the interpreter, or at one of their own speakers, they grunted in chorus "ugh," in approval. It was very noticeable that to the last named sentence there was a dead silence. The pow-wow ended, after a continuous session of [illegible] three hours, by hand shaking all around.

THE BANK OF MILBANK.

Sargent & Digge, Bankers.

Milbank, South Dak. 5/13 1889

John W. Noble Esq

My Dear Sir:

I presume you are annoyed by my frequent communications, but the matter of opening the Sisseton Reservation is one of sufficient importance to all our people to warrant the utmost effort to secure it.

Hoping to hear from you soon.

Yours Sincerely,

Digge

Washington, January 19, 1888.

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to acknowledge the receipt, by Department reference, of a communication from D. H. Biggs, of Pilcenk, South Dakota, dated May 4, 1888, in which he states that a convention of delegates from all the counties contiguous to the Sisseton reservation, was recently held at Watertown, to consult as to the steps necessary to secure the early opening of said reservation to settlement.

He states that the reservation has for years been a barrier to the extension of much needed railroads, and asks if there is any thing that can be done to facilitate its opening.

The Sisseton reservation, created by the treaty of February 19, 1867, (15 Stats., 505), contains 918,720 acres of which some 107,440 acres have been allotted in severalty, and 1,417 acres reserved for church and other purposes, leaving a surplus of some 799,863 acres.

In his report dated December 10, 1887, submitting schedules of allotments made on this reservation, Special Agent Lightner expressed the opinion that the Indians were then unalarmed by clauses of a part of these surplus lands, and that it would be advisable to negotiate with them, re-

because many of them were needy and should have houses built, &c.

The 5th section of the Act of February 8, 1887 (24 Stats., 389), provides "That at any time after lands have been allotted to all of the Indians of any tribe, as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portion of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress."

The treaty of 1867 contains no provisions applicable to such negotiations.

The allotments on this reservation have virtually been completed, although it is possible that there may be a very few persons still entitled to allotments, who were not found by Special Agent Lightner.

It would, I believe, be for the best interests of the Indians to throw open to settlement a large portion of their surplus lands on such just and equitable terms as may be agreed upon by them.

There is no appropriation available for the payment of a Commission to negotiate for the purchase of the surplus lands.

Such negotiations can proceed no further than securing the consent of the Indians to the sale of such portion of the reservation as may be agreed upon, and determining the considerations for which they are willing to make the cession, these negotiations to be submitted for the approval of Congress, which alone can prescribe the form and manner of executing the necessary release.

Such preliminary negotiations might be held with the Sisseton Indians during the present season, (after the delivery of their patents now in preparation) to be conducted by an officer or officers now in the service, specially designated thereto, if it shall be considered by the Department wise to take such proceedings.

An Inspector of the Indian service and a Special Indian Agent, acting with the resident Agent for the Sisseton Agency, might be constituted a Commission for the purpose, or, omitting the resident Agent, and substituting in his stead, a Special Agent of the General Land Office or an Officer of the Army stationed in the vicinity, to serve as one member of the Commission, if advisable.

Very respectfully,

Your obedient servant,

A. B. Reed

Acting Commissioner.

Allen.

Department of the Interior.

OFFICE OF INDIAN AFFAIRS.

WASHINGTON August 18, 1888.

Sir:

I have the honor to transmit, herewith, for your approval, draught of instructions for the guidance of a Commission (to be appointed) to negotiate with the Sisseton and Wahpeton Indians for the sale of their surplus lands under the provisions of the Act of February 8, 1887, (24 Stats., 388).

Very respectfully,

Your obedient servant,

J. D. C. Atkins

Commissioner.

(Allen)

OFFICE OF INDIAN AFFAIRS

Washington August 18,1904.

Dear Sir:

Upon receipt hereof,you will proceed to the Standing Agency,Nevada,for the purpose of negotiating with the Shoshone and Paiute Indians for the relinquishment of such portions of the Lake Tahoe Reservation,not allotted,as said Indians may consent to relinquish.

Such negotiations are authorized by the 8th Section of the Act of February 7,1887,which provides: " That at any time after lands have been allotted to all the Indians of any tribe as herein provided,or sooner if in the opinion of the President it would be for the best interests of said tribe,it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe,in conformity with the treaty or statute under which such reservation is held,of such portions of its reservation not allotted as such tribe shall,from time to time,consent to sell,on such terms and conditions as shall be considered just and equitable,between the United States and said tribe; which purchase shall not be complete until ratified by Congress,and the form and manner of executing such release shall also be prescribed by Congress".

The Lake Tahoe Reservation was created by the Act of June 1,1880 (21 Stats.,146) to carry into effect the treaty between the United States and the Pyramid Lake and Walker River bands of Paiute Indians,concluded October 1,1859 (11 Stats.,V.).

In addition to the latter,of which some 1,000 acres have been allotted in severalty and 1,417 acres reserved for church and other purposes,leaving a surplus of some 760,470 acres.

The allotments have virtually been completed,although it is possible that some few individuals who were not on the reservation when the allotments were made in 1907 are entitled to allotments.

The treaty makes no provision regarding the cession or relinquishment of the reservation or any portion thereof.

It is understood that the Indians desire to sell a portion at least,of their surplus lands.

You will call a full council of the bands and submit the subject for their consideration. If a majority of such council determine to sell any portion of the reservation,you will then agree upon the quantity of land to be sold,and its location,which should be described by sections,or other legal subdivisions of township.

It is not considered advisable that the cession at this time should embrace all these surplus lands. A sufficient quantity should be reserved for future contingencies.

The terms and conditions of the sale should then be agreed upon,which should be just and equitable to the Indians,as well as to the United States.

You will explain to the Indians that under the Act of May 27,1902 (32 Stats.,245) the sum agreed to be paid as purchase money,will be in

in the treasury of the United States for which said Indians with interest thereon at 5 per cent per annum,to be at all times subject to appropriation by Congress for the education and civilization of said Indians.

The terms and conditions agreed upon in Council,with the description of the lands to be relinquished,should be reduced to writing and incorporated in the accompanying form of agreement which should be signed by at least a majority of the male adults of the bands.

All such adults should be given an opportunity to sign.

When freely and precerly signed,your certificates and the certificate of the Official Interpreter,should be attached to the instrument.

The proceedings of the Council should be reduced to writing and attested by your signatures and that of the Official Interpreter.

The Indians should be informed that the negotiations will not be valid or binding until ratified by Congress.

Very respectfully,

(Signed)

Agent.

Department of the Interior,

OFFICE OF INDIAN AFFAIRS,

WASHINGTON, [illegible] 12, 1889.

The department

The Commissioner of Indian Affairs.

Sir:

Referring to your communication dated September 5,1889,designating

U.S. Indian Inspector,

Asst. Adjt. Gen'l, Dept. of Dakota,

U.S. Indian Agent,

for the duty of conducting negotiations with the Sisseton and Wapeton Indians for the sale of their surplus lands,and to your letter of September 27,1889,revoking the designation of Hon. [illegible], I have the honor to recommend that Gen. Whittlesey,Secretary of the Board of Indian Commissioners,be designated in place of Mr. [illegible] and that A. [illegible],Esq.,Chief of the Land Division of this office,be detailed to act with Agent [illegible], who is now engaged in important duty at a place remote from the Sisseton reservation.

[illegible] and to hold them free from the [illegible] of the members of the Board of Indian Commissioners.

The appointment of Mr. [illegible] is recommended because it is [illegible] one of the Citizens' Delegation [illegible]

familiar with the [illegible] of these Indians, [illegible] and [illegible] will be [illegible] since [illegible].

In the event of his [illegible] authority is requested for the payment of his [illegible] and [illegible], [illegible] and other incidental expenses, [illegible] subsistence, from "[illegible] Indian Department, 1890", a balance of which is available for that purpose.

It is regarded as important that the proposed [illegible] should be commenced as soon as possible.

Very respectfully,

Your obedient servant,

T. J. Morgan

Commissioner.

[illegible]

A GRAMMATICAL ANALYSIS OF A PORTION OF SECTION 30

OF THE ACT OF CONGRESS OF MARCH 3, 1891

Seven members of the English Department at The University of South Dakota responded to the request by the Attorney General of the State of South Dakota to interpret the grammatical construction and meaning of a portion of Section 30 of the Act of Congress of March 3, 1891.

The clause in question reads as follows:

1 That the lands by said agreement ceded, sold,
2 relinquished, and conveyed to the United States
3 shall immediately, upon the payment to the
4 parties entitled thereto of their share of the
5 funds made immediately available by this act,
6 and upon completion of the allotments as pro-
7 vided in said agreement, be subject only to entry
8 and settlement under the homestead and townsite
9 laws of the United States, excepting the six-
10 teenth and thirty-sixth sections of said lands,
11 which shall be reserved for common school pur-
12 poses, and be subject to the laws of the State
13 wherein located:

The structure of this clause leads to an apparent ambiguity: whether the final phrase, "and be subject to the laws of the State wherein located," is controlled by the first "shall" (line 3) or by the second "shall" (line 11). If the phrase is controlled by the first "shall," then the meaning of the final phrase is, "That the lands (line 1)...shall (line 3)... be subject to the laws of the State wherein located" (lines 12-13). If the second "shall" controls, then the meaning is, "...the sixteenth and thirty-sixth sections (lines 9-10)... shall be reserved (line 11)...and be subject to the laws of the State (lines 12-13)...."

It is most difficult to ascertain the intent of a statement as ambiguous as this one through a grammatical analysis. Sentence structure results from the writer's individual eccentricities, educational background, and societal expectations, none of which are known in this case. While grammar has no natural laws, it does have conventions. Those professors who examined the clause were able to deliver opinions, based on those conventions, as to the writer's intent. The majority, but not all, of this group feels that the intent of this clause is, "That the lands...shall...be subject to the laws of the State..."

Following is a compilation of observations and analyses submitted by members of the English Department.

1. Parallel structure.
a. Parallelism in the clause functions best if the first "shall" (line 3) controls both of the "be subject" predicates (lines 7 and 12). If the intention of the writer were to create a parallel with "shall be reserved" (line 11), he may either have found a more convenient way to express "subject to entry and settlement" (lines 7-8) (e.g., "entered and settled"), or have omitted the "be" in the final verb and the final comma (line 12) (i.e., "be reserved for common school purposes and subject to the laws of the State wherein located.")

b. The verb phrase which begins with "shall" in line 3 is not completed until line 7 with "be subject." Assuming that the second "be subject" (line 12) is controlled by the same "shall," there is a parallelism in style in which the completion of the verb is delayed by intervening parenthetical material. On the other hand, the other "shall" verb phrase--"shall be reserved" (line 11)--is not separated, implying that it is a single unit functioning only within a subordinate clause.

c. The use of one auxiliary to control two verbs of essentially different, even contradictory, meanings would be unusual. Hence the "shall" of line 11 is probably not intended to control both "be reserved" (line 11) and "be subject" (line 12).

2. Word Order.
a. Although it may seem natural that modifying elements would be placed in close proximity to the modified material, suggesting that the final phrase logically attaches to the second "shall," such need not be the case. The clause is of the structural type known as periodic, which means that the important parts of a sentence are suspended until the end. As a stylistic device, the periodic structure was common up through the nineteenth century, but is not much used today.

b. The first "shall...be subject" (lines 3, 7) is interrupted by two significant modifying prepositional phrases: "upon the payment..." (line 3), and "upon completion..." (line 6). Another modifying phrase--"excepting the sixteenth and thirty-sixth sections of said lands, which shall be reserved for common school purposes..." (lines 9-12)--is inserted to permit the second "be subject" (line 12) to appear last. If the sentence were to end with a non-restrictive "which" clause (lines 11-13), all the care that the writer took to state the prepositional modifiers of the first "be subject" verb come to nothing.

3. Punctuation.
Commas are used for two purposes in the clause: to separate items in a series and to set off non-restrictive modifiers.

a. The verbals in lines 1-2 create a sequence of more than two, and the commas are used in the obvious and conventional manner. Less obvious is the comma between "act" and "and upon..." in lines 5-6. Normally, a comma is omitted when the series has only two items separated by a conjunction. The presence of a comma at that point argues that the final comma (line 12) also separates two serial items, making the final phrase dependent on the "shall" of line 11. There are two differences, however. One is that the "upon" phrases (lines 3-7) are quite long, justifying a pause even though strictly speaking a comma is not required. The final lines are much shorter. The second difference is in the parallelism. The two "upon" phrases are totally parallel and equal. In lines 11-13, had the writer wished to maintain the parallel structure he so carefully uses throughout, he would probably have repeated the words "which shall." These lines do not appear to be items in a series.

b. The use of commas operating in pairs to set off non-restrictive modifiers appears consistent. The commas before the first "upon" (line 3) and after "agreement" (line 7) enclose the parenthetical material separating the auxiliary "shall" from its companion "be subject" (line 7). Likewise, the comma before "excepting" (line 9) and after "purposes" (lines 11-12) set off a statement which qualifies the verb "be subject" (line 7). This final comma (line 12) performs a double duty in that it also sets off the "which" clause, an adjectival subordinate clause modifying "sections" (line 10).

4. Summary.
The foregoing observations and analyses support the conclusion that the writer's intent was to allow the first "shall" to control the final phrase, with the resultant interpretation that all of the lands, not just those sections reserved for school purposes, are to be subject to state law.

The faculty members listed below contributed to the analysis of this passage but do not necessarily concur with all of the details of the statements.

Assoc. Prof. Raphael Block
Assoc. Prof. Stephen Dill
Assoc. Prof. Thomas Gasque
Asst. Prof. Gervase Hittle
Asst. Prof. William Lemons
Asst. Prof. Susan Robbins
Asst. Prof. Adrian Weiss

APPENDIX

The following diagrammatic arrangement, keeping original punctuation but capitalizing the main elements, summarizes the analysis:

That

THE LANDS

by said agreement

ceded ,
sold ,
relinquished,
and conveyed } to the United States

SHALL

immediately

,upon { the payment to / the parties entitled thereto / of their share / of the funds / made immediately available / by this act } , and upon { completion of / the allotments / as provided in / said agreement } ,

BE SUBJECT

only

TO { ENTRY and / SETTLEMENT } under the homestead and townsite laws of the United States

,excepting { the sixteenth and / thirty-sixth sections / of said lands } ,which { shall be / reserved / for common / school purposes },

and

BE SUBJECT

TO THE LAWS of the State wherein located: